

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his  
capacity as ATTORNEY GENERAL OF  
THE STATE OF OKLAHOMA and  
OKLAHOMA SECRETARY OF THE  
ENVIRONMENT C. MILES TOLBERT,  
in his capacity as the TRUSTEE FOR  
NATURAL RESOURCES FOR THE  
STATE OF OKLAHOMA,

Plaintiff,

v.

TYSON FOODS, INC., et al,

Defendants,

TYSON FOODS, INC., et al,

Third-Party Plaintiffs,

v.

CITY OF TAHLEQUAH, et al,

Third-Party Defendants.

Case No. 05-CV-0329-JOE-SAJ

**COMBINED ANSWER OF  
THIRD PARTY DEFENDANTS  
LENA AND GARNER GARRISON AND  
BRAZIL CREEK MINERALS, INC. TO  
THIRD PARTY COMPLAINT**

COME NOW, the Third Party Defendants, Lena and Garner Garrison and Brazil Creek Minerals, Inc., and for their answer to the Third Party Complaint of the Third Party Plaintiffs herein,

respectfully show this Court, in response to the numeric paragraphs of said Third Party Complaint, as follows:

**I.**

**Response to Numeric Paragraphs**

1. Lena and Garner Garrison and Brazil Creek Minerals, Inc. (hereinafter collectively “Third Party Defendants”) admit that the Plaintiffs’ First Amended Complaint attached to the Third Party Complaint as Exhibit “1” is an accurate copy of said pleading. The remainder of the allegations contained in Paragraph 1 constitute arguments of law and require no response.

2. Paragraph 2 consists entirely of arguments of law and requires no response.

3. Third Party Defendants lack sufficient information to admit or deny the allegations of Paragraphs 3 through 35, inclusive and, accordingly, deny the same.

4. Third Party Defendants admit the allegations of Paragraph 36 only to the extent that said paragraph recites that Third Party Defendants, Lena and Garner Garrison, have a legal interest in the described property located in Sequoyah County, Oklahoma, and have leased a portion of the same to Third Party Defendant, Brazil Creek Minerals, Inc. for purposes of limestone mining, which operations have been duly permitted by the Oklahoma Department of Mines. Third Party Defendants deny the remainder of the allegations of Paragraph 36.

5. Third Party Defendants admit that Third Party Defendant Brazil Creek Minerals, Inc. is a corporation organized under the laws of the State of Oklahoma, with a principal place of business in Forth Smith, Arkansas, and that Brazil Creek Minerals operates a limestone quarry on a portion of the premises described in Paragraph 37 which said quarry is duly permitted by the

Oklahoma Department of Mines. Third Party Defendants deny the remainder of the allegations of Paragraph 37.

6. Third Party Defendants lack sufficient information to admit or deny the allegations of Paragraphs 38 through 170, inclusive and, accordingly, deny the same.

7. The allegations of Paragraph 171 consist entirely of legal arguments and require no response.

8. Paragraphs 172 and 173 consist entirely of conclusory legal argument and require no response.

9. Third Party Defendants admit that the copy of the Amended Complaint attached to the Third Party Complaint as Exhibit “A” is a true copy and deny any allegations or paraphrased characterization of Paragraphs 174 through 195 inconsistent with the language of said Amended Complaint.

10. Third Party Defendants lack sufficient information to admit or deny the allegations of Paragraphs 196 through 221, inclusive, of the Third Party Complaint and, accordingly, deny the same.

## **II.**

### **Affirmative Defenses**

Third Party Defendants assert the following Affirmative Defenses:

1. Failure to state a claim upon which relief can be granted.
2. Failure to join a necessary party.
3. Laches.
4. Estoppel.

WHEREFORE, Third Party Defendants request that Third Party Plaintiffs take nothing by their Third Party Petition herein, and that Third Party Defendants be dismissed herein, together with an award of their costs, attorney fees, and such other and further relief as the Court may deem fitting.

Dated this 10<sup>th</sup> day of April, 2006.

Respectfully submitted,

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Attorneys for Third Party Defendants  
Lena and Garner Garrison and  
Brazil Creek Minerals, Inc.

By: /s/J. Stephen Neas  
Thomas J. McGeady, O.B.A. #5984  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of April, 2006, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing. Based on the electronic records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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I hereby further certify that on this 10<sup>th</sup> day of April, 2006, I mailed a true and correct copy of the above document to the following who are not registered with the ECF System by depositing the same into the United States Mail with proper postage prepared thereon:

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/s/ J. Stephen Neas  
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